R.S. IX—5]

Previous references. 1923 court File No. 98-23

Later references.

Preserve

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Two

Part B for April 1924

SUBJECT

Communication of the sentence of transportation for life passed on Kalinga in Chittaldrug session case no 2 of 1923-24 [illegible] imprisonment for seven years

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80 no P 5059 8-4-24 To Hon'ble Co

Sanctioned

Mamasamany Iyer
11/4/24

G. R. S. 59]

GENERAL AND REVENUE SECRETARIAT.

1910.

(Miscl.)

File No. 223-10

Serial Nos. 1 and 2.

Papers Filed.

Month November 10

SUBJECT.

Repairs to the kitchen attached to the temple of Sree Yoganandishwara Swa
- Nandidurg Hills Chik Kaballapur Taluk

PREVIOUS REFERENCES.	LATER REFERENCES.
	M. 7. 27-11

G. R. S. 11J 1923-4

34/29 1

GENERAL AND REVENUE SECRETARIAT.

(C5)

NOTES.

File No. 198

FILE HEADING.

Commutation of Sentence of transportation for life passed on Kaliya, Appellant in CR. Appeal no 533 of 1924 of the Chief Court

From

The Regr Chief Court

No. 533 Dated 6.2.24 Received 7-2-24

Diary No. 3429	Enclos. 1 file Spare Copies.	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Forwards a copy of judgment in CR Appeal no 533 of 23-24 file of the Chief Court recommending the reduction of sentence of transportation for life passed on Kaliya in Abbotabad Murder Case no 2 of 23-24 on the file of the Sessions Judge Hazara and confirmed in CR Appeal no 5-3 of 23-24 on the file of the Chief Court

NOTES AND ORDERS.

Submitted — The Chief Court has sent the records with a recommendation that the sentence of transportation passed may be remitted to one of 7 years imprisonment. The Court have no such

8.2.24

G. R. S. III-2]

General and Revenue Secretariat.

File No. 195 of 1923

Serial No.

desertion, and under Sec 401 Cr. Pro. Code, remission of sentence passed, is reserved as a prerogative of Govt.

Murders under the circumstances disclosed in this case have generally been treated leniently not only in British India, but also in Foreign Countries. There have been instances where a punishment of only 6 months has been awarded in cases of the kind. Certain races & Countries went the length of justifying killing in such cases, & declining to treat the act as an offence.

The recommendation of the Chief Court, may perhaps be appro[ved] at least

Though Section 401 Cr.P. Code does not strictly empower the Chief Court to submit such cases to Govt. with their recommendation, there has been a practice in vogue to that effect. There are circular orders issued in some of the Provinces. No such circular order is issued in Mysore. Some decided cases support the practice.

P.T.O.

Serial No.

Turning now to the merits of the case, ther is much force in the recommendation made by Chie Court.

The facts show clearly that the husband actually witnessed his wife having sexual intercourse with her paramour in his house, when he returned from Drama that he would have murdered them but for the intercession of some respectabl villagers and relatives and that he actually rem the Tali from her neck, thereby showing his -- intention to give her up; and that he committed the deed a few days after the occurrence.

From the facts found, it is clear that there was grave provocation for the deed that it was not sudden. The conviction is solely based on circumstantial evidence. The medical evidence has mainly influenced the decision of the Judges. Except this evidence there is no strong evidence to base a ~~decision~~ conviction on. The circumstances may well give ~~him~~ rise to a suspicion that the wife might have drowned herself to save her honour. This conclusion was negatived by medical evidence.

Taking all the circumstances into consideration, the recommendation of the Chief Court may perhaps be accepted and the sentence may be - reduced.

DEWAN'S OFFICE,
RD. 7 - MAR. 1924
6522

First Member)

Recommendation of the Chief Court may be approved.

Council case. May be disposed of by Recommendation which will be approved from above

Chief Secretary) Dewan)

NOTE—Contn. sheet.

5

For Disposal by Circulation.)

No. C. C 377

1923 19 24

GENERAL AND REVENUE SECRETARIAT.

Council Matter.

SUBJECT.

Letter from the Registrar, Chief Court recommending the reduction of the sentence of transportation for life passed in criminal case No.2 of 23-24 on the file of the Sessions Judge, Shimoga Division, to rigorous imprisonment for seven years.

CIRCULATED TO THE MEMBERS OF COUNCIL.

By Order,

Chief Secretary to Government.

12th March 1924.

Extraordinary Member of Council.

First Member of Council. Seen

Second Member of Council. 14/3

Third Member of Council. 7960 17/3.

Subd to I member for final note

973

Final Note signed by the Members

placed in the file.

Final Note by the First Member of Council.

Subject:—

Commutation of the sentence of transportation for life passed on Kalinga in Chitaldrug Sessions Case. No. 2 of 1923-2 to rigorous imprisonment for seven years.

Kalinga was charged with the murder of his wife and convicted and sentenced to transportation for life in Chitaldrug Sessions Case No. 2 of 1923-24. The evidence disclosed that two days prior to the murder the accused found his wife in actual cohabitation with his cousin Siddappa and the Sessions Judge found that the accused assulted her and strangled her to death in an outbru of passion due to excessive brooding over the affair. The provocation for murder not being sudden, he could not but convict the accused of murder, but sentenced him however to transportation fo life. The conviction and sentence were confirmed by the Chief Court on appeal, but the Judges, who heard the case, remarked in the judgment that 'in view of the great though not sudden provocation under which the accused was labouring, his is a fit case for the exercise of the prerogative of clemency by a commutation of t sentence to one of rigorous imprisonment for a term of say seven years'. The records of the case have accordingly been sent up t Government for such action as they may deem fit to take.

Taking all the circumstances of the case into consideration, am of opinion that the recommendation of the Chief Court for the reduction of the sentence to rigorous imprisonment for seven year may be approved. The Dewan and the Second Member of Council agr with me in this view.

The reduction of the sentence may be graciously approved.

Mir Hamza Hussain

MEMBER OF COUNCIL.

Bangalore,
22nd March 1924.

Submitted to His Highness.

I submit herewith a Final Note by the....First.....

Member of Council on the subject of...commutation...of the sen

of transportation for life passed on Kalinga...in Chital

Sessions Case No.2 of 23-24 to rigorous imprisonment f

for His Highness' gracious approval.

Dewan.

25 MAR 1924

2429

C 377 9

General and Revenue Secretariat.

Letter from the Registrar, Chief Ct recommending the reduction of the Sen of transportation for life passed in crim case no. 2 of 23-24 on the file of the Sessions judge, Shimoga Dn to rigorous imprisonment for seven years.

31. All urgent or confidential files returned with His Highness' orders may, in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at headquarters and then sent to the Secretariat concerned for the issue of orders.

Circulated to the Members of Council for perusal of

*

His Highness' orders $\frac{\text{before}}{\text{after}}$ issue of orders. (*Vide* Rules 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

Chief Secretary to Govt.

Through the Secretary to Government.

....L and L....Departments.

27/10

0336 27/3.

FIRST MEMBER OF COUNCIL. 25/3

file has been sent to II member after his return to Cantons.

SECOND MEMBER OF COUNCIL.

THIRD MEMBER OF COUNCIL.

L and L Secy, with Compts.

Issue Govt orders 29/3

Govt orders issued 29.3 27/3.

NOTE—Contn. sheet.

Mono WD 1190—GPB—500 9-1- 3.

G. R. S. III-2,

General and Revenue Secretariat.

CS File No. 198 of 1924

Serial No.	
	Ltr with draft — Issue By 31/3/24 1/4
2	To the Regr. Chief Court No. P. 5659. d. 8. 4. 24. Commute the sentence of Transpor. for life passed on Kalunga to one of R. I. for 7 yrs.

9/4

ontn. sheet.

25365

3429

CHIEF COURT OF MYSORE

Telegraphic Address. "JUSTICE"

Bangalore, dated 30th January 1924.
6th February 1924

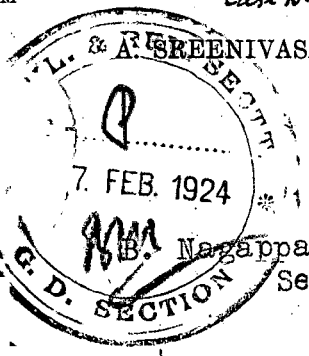
No. 533 of 6.2.1924.

Encl:. Copy of judgt. in Cr. app. No. 53 of 23-24 and Records in case No 2 of 23.24. (Records in Chitaldrug Sessions file) *

* separately sent.

FROM

A. SREENIVASARAGAVACHARI, ESQ., B.,A., B.L.,
Registrar, Chief Court of Mysore.



To

B. Nagappa, Esq., Bar-at-law.,
Secretary to Government,
Local and Legislative Departments.
Bangalore.

Under section 401 of the code of Criminal Procedure directed to forward a copy of Judgment in Criminal al No.53 of 1923-24 on the file of this Court recommend- for the reduction of the sentence to rigorous imprison- for seven years.

The entire records are herewith submitted for reference and return.

I have the honor to be,
Sir,
Your most obedient servant,
A. Sreenivasaragavachari 5/2/24
Registrar.

G.K.

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Wednesday, the 30th day of January 1924.

Present.

Rajadharmapravina

Dewan Bahadur K.S. Chandrasekhara Aiyar,

Chief Judge,

and

Mr. Justice R. B. P l u m e r.

PETITION OF CRIMINAL APPEAL

No. 53 of 1923 - 24

against the conviction and sentence by the Sessions Judge of Shimoga Division, under section 302 of the Indian Penal Code, in Chitaldrug Sessions Case No. 2 of 1923 - 24.

APPELLANT.

K a l i n g a

(Accused)

J u d g m e n t.

In this case the appellant accused has been charged with the murder of his wife. The assessors thought him not guilty, but the learned Sessions Judge, Shimoga Division, differed from their view and found him guilty and sentenced him to transportation for life. He refrained from passing the capital sentence because the evidence proved that two days prior to the murder the accused, returning home unexpectedly early from a

drama,

drama, the performance of which had not taken place, found his wife in actual cohabitation with his cousin Siddappa, prosecution witness No. 7. The learned Sessions Judge found that as a result of brooding over his wife's infidelity the accused in an outburst of rage assaulted her and strangled her to death and considering the gravity of the provocation he inflicted the lesser sentence.

The accused appeals from Jail on the ground that the evidence of prosecution witnesses Nos. 1, 2, 3 and 5, on which the prosecution case mainly depends, is full of contradictions and quite unreliable.

Mr. Belur Sreenivasa Iyengar, Advocate, argued the appeal on behalf of the appellant, and the learned Government Advocate was heard in support of the conviction.

Appellant's counsel's two main contentions are that there is room for reasonable doubt that death may be due not to strangulation but to drowning, and that the evidence of prosecution witnesses Nos. 1, 2, 3 and 5 is quite unreliable. He urges also that the conduct of the accused in reporting his wife's disappearance to the Police on Wednesday evening is incompatible with his being guilty of her murder.

We are unable to agree with any of these contentions. We think the symptoms disclosed at the post mortem especially the bruised and swollen condition of the neck and throat, a condition also specially noticed and recorded at the inquest fully support the opinion of the medical officer (prosecution witness No. 4) who conducted the post mortem examination that death was due to asphyxia caused by

throttling

throttling and not by drowning, and this is further su
ported by the absence of water in the air vessels and
stomache and of all the other conditions usually pres
in cases of death from asphyxia ~~as~~ due to drowning.

No doubt there are several material discrepancies in the evidence of prosecution witnesses Nos. 1, 2 and 3 who depose that the accused secured their assistance when he carried the corpse of his wife to the well and threw it in; but we agree with the learned Sessions Judge in his view that their evidence is in the main true. The Amildar examined prosecution witnesses Nos. 1, 2 and 3 on the 7th June, two days after he had arrested the accused. It was as a result of information received that the Amildar examined them. He refused to give out the source of his information but it cannot have been the accused or the Amildar would have been very willing and anxious to disclose that fact: so it is apparent that the fact that these persons had helped the accused to dispose of the corpse had somehow leaked out and become known to whoever was the Amildar's informant. No reason is shewn for the police to have connected these three persons in particular with the disposal of the corpse, nor why they should have thought of pitching upon prosecution witness No. 5 as a man whose help in the disposal of the corpse the accused had sought, nor is there any obvious reason for doubting the truth of prosecution witness No. 5 when he says that the accused did so seek his aid but that he managed to avoid giving it.

We therefore accept the evidence of prosecution witnesses Nos. 1, 2, 3 and 5 and that of itself fully proves the guilt of the accused.

We do not think that the accused's conduct in giving information to the police late on Wednesday afternoon that his wife had disappeared, is at all incompatible with his guilt. It is by no means compatible with the truth of the story then given by the accused to the police that up to the time of making his report the accused who said that he found his wife missing at sunrise, had not gone or sent to her ~~parents~~ parents' house, only 24 miles away, to see if she had gone there, though that was the natural place for her to have gone if she had really left her husband's house.

Then again it is significant that when the corpse was found floating in the well there was no thali found on it. The evidence of the patel, prosecution witness No. 6, proves that he was called to the accused's house by the accused's relatives and the father of Siddappa, prosecution witness No. 7, about 4 A.M. on the morning of Monday the 28th May, that he then found Siddappa tied to a pillar in the accused's house, and learnt that he had been caught by the accused in the act of cohabiting with the accused's wife, that he eventually persuaded the accused to release him, and that the accused was then in great anger and wanting to kill both his wife and Siddappa with a chopper if only he had had one, and also endeavouring to get at his wife to tear off her thali. If the woman had committed suicide and drowned herself there is no probability that she would first have removed her thali. Nor could there have been a quarrel and fight between the accused and his wife in the course of ~~xk~~ which he had torn off her thali on Tuesday night, or the accused's cousin Tuppeda Basappa and his uncle Shannappa who live next door on either side of the accused's

house must have heard it, and knowing the bad blood be
ween husband and wife they would have hurried to the s
and Channappa who was examined at the inquest would the
have mentioned the affair.

So we think the absence of the thali distinctl
indicative of the truth of the prosecution case.

Again the evidence of prosecution witness No. 1
is to the effect that the corpse was lying in the catt
trough in the cattle shed and was rolled up in gunny b
and carried to the well and that the accused took back
the gunny bags to his house. The evidence of the Ami
shows that when he found the gunny bags in the accused
house, he noticed that they were soiled with cowdung.
He deposes also that they were stained with blood and
faeces, but the chemical examiner to whom they were se
found no blood stains on them and the sadi on the corp
was not stained, so the Amildar may be mistaken in th
ing that the stains on the gunny bags were blood and f
but there is no likelihood that he is mistaken as to t
cowdung. Now when the corpse was removed from the wa
cowdung was found adhering to both the knees, and this
taken in conjunction with the cowdung found on the gun
bags by the Amildar is, we think, strong corroboration
the truth of this part of the evidence of prosecution wit-
ness No. 1.

It is clear that the accused had the strongest
possible motive for great anger against his wife. No one
else had any motive to think of harming her, she did not
commit suicide, she was admittedly alive and sleeping in
the accused's house on Tuesday night, from Wednesday
morning she was never again seen alive, late on Wednesday
afternoon the accused gave an untrue report of her

ier disappearance, manifestly designed to ward off suspi-
ion from himself and avert a search of his house should
nybody else report her disappearance, and the fact that
he corpse was floating by 7 A.M. on Thursday morning indi-
ates that death must have occurred not less than from
0 - 24 hours previously and therefore in all probability
ate on Tuesday night or before day break on Wednesday
orning. The medical evidence shows that death was not
lue to drowning but to ~~xkxxx~~ strangulation. The cumula-
ive effect of all these facts makes it impossible to
void the conclusion that the accused throttled his wife
nd caused her death. We accordingly confirm the convic-
tion and the sentence which is the least permissible by
law for a criminal court to pass.

We think however that in view of the great though not sudden provocation under which the accused was labouring his is a fit case for the exercise of the prerogative of clemency by a commutation of the sentence to one of rigorous imprisonment for a term of say seven years. The records of the case will accordingly be placed before Government for such action as they may deem fit to take.

(Signed) K.S. Chandrasekhara

CHIEF JUDGE.

(Signed) R.B. Plumer

JUDGE.

Copy

Asst Registrar

Registrar

G.R..S VI G 34

10.

SUBJECT.....

Diary No. of letter replied to.....

Section Ch

File No. 198.

Serial No. 2

...al and Revenue Secretariat

( )

, the *192*

ate of issue..... 8/4/24

gned by.....

Proceedings of the Government of His Highness the Maharaja of Mysore.

Read—

letter no 533/Cr dy 6.2.24 from the Regr Lokayukta court forwarding a copy of judgment in CR Appeal no 53 of 23-24 file of the Lokayukta court, seeking for the reduction of the sentence of transportation for life passed on Kalinga in Chitaldrug Sessions case no 2 of 23-24 on the file of the Sessions Order Thereon No. Judge Shimoga. the sentence of Rigorous Imprisonment for 7 years.

order dy 5.6.24 Records

Govt are pleased to commute the sentence of transportation for life passed on Kalinga in the above case to one of R.I. for seven years

ay this be

i Printed ?

ii treated as a standing order ?

iii published in the Gazette, English Part ?

iv translated ?

v placed at the disposal of the press ?

vi published in the Gazette, Kannada Part ?

Ch to dy 5.6.24

30/3/24 Regr Lokayukta